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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 CYSTINE WAGENSCHUTZ,,
11 Plaintiff,
12 vs.
13 STATE FARM FIRE & CASUALTY
COMPANY and DOES I through X, inclusive,
14 Defendants.

15 Case No.: 2:17-cv-02875-GMN-NJK

16
17 **STIPULATION AND ORDER FOR
DISMISSAL WITH PREJUDICE, CAP ON
DAMAGES, AND AGREEMENT FOR
PRIVATE BINDING ARBITRATION**

18 This Stipulation and Order for Dismissal With Prejudice, Cap On Damages, And Agreement For
19 Binding Arbitration (hereinafter “Agreement”) is entered into by Plaintiff, Cystine Wagenschutz
20 (“Plaintiff”), and Defendant, State Farm Fire & Casualty Company (“State Farm”), (collectively referred
21 to as the “Parties”), as an alternative method of resolving a dispute that has arisen from two separate
22 automobile accidents that occurred on September 17, 2016, and October 27, 2016, respectively, which
23 resulted in two separate UIM claims (Claim Nos. 28-9D73-822; 28-9P17-368, respectively), and which
24 culminated in a lawsuit styled *Cystine Wagenschutz v. State Farm Fire & Casualty Company*, currently
25 pending in the United States District Court, District of Nevada, Case No. 2:17-cv-02875-GMN-NJK.
26 Plaintiff is represented by Stucki Injury Law and Tingey & Tingey. State Farm is represented by Hall
Jaffe & Clayton, LLP.

27 The following terms and conditions of this Agreement will become effective upon the signature
28 by the Parties and the execution and filing of the same by this Court.

1 1. State Farm has issued two separate policies of automobile insurance, one naming Cystine
2 Wagenschutz as the named insured (Policy No. 095069728B), and another naming Bernadine A.
3 Lewandowski as the named insured (Policy No. 122946628), which provide, among other coverages,
4 Uninsured/Underinsured Motor Vehicle coverage (“UIM”). Each of these separate policies contains
5 UIM limits of \$50,000 “each person” for any single accident, subject to all terms, conditions, limitations
6 of the policy and any applicable offsets.

7 2. In an effort to resolve all disputes, claims, and controversies between the Parties arising
8 out of and relating to the September 17, 2016, and October 27, 2016, automobile accidents and
9 subsequent claims handling and decision-making, the Parties have agreed to dismiss the pending lawsuit
10 with prejudice, cap all damages against State Farm at \$100,000 (which is the aggregate of the two
11 separate \$50,000 UIM limits from each policy for each accident), and allow the remaining UIM value
12 dispute claims to be submitted to and decided through binding arbitration.

13 3. For and in consideration of the mutual covenants and promises made herein, the Parties
14 enter into this Agreement and agree to be bound by its terms as fully stated herein.

15 4. The Parties, through this Agreement, agree to dismiss the instant lawsuit with prejudice
16 that is currently on file in the United States District Court, State of Nevada, with each party to bear its
17 own fees and costs.

18 5. The Parties agree that the arbitration shall be binding and shall be the sole and final
19 resolution and adjudication of Plaintiff’s UIM value dispute claims against State Farm arising out of the
20 September 17, 2016, and October 27, 2016, automobile accidents. The arbitrator’s decision and award
21 shall be the sole basis for recovery on this claim and shall be final and binding. The Parties agree that
22 there shall be no right of appeal of the arbitrator’s decision to any trial or appellate court or any other
23 court, forum, person or entity, or the arbitrator himself. Likewise, the Parties agree that there shall be no
24 right to submit a motion for reconsideration or similar motion or request to the arbitrator.

25 6. The arbitrator will only be asked to resolve the issue of Plaintiff’s legal entitlement, if
26 any, to UIM proceeds under the two separate policies arising out of the two separate automobile
27 accidents, subject to all terms, conditions, and offsets under the policy and Nevada law. In other words,
28 the arbitrator shall determine fault for these accidents (and apportion it appropriately, if necessary), and

1 the extent of Plaintiff's damages by placing a fair and equitable "total value" (which includes
2 compensable medical specials, income loss, and general damages) on Plaintiff's claims for each
3 accident, and the application of any of the policy's terms, conditions and exclusion, if applicable. The
4 arbitrator will not be asked to and will not consider any alleged claims handling/decision-making issues
5 or liability for extra-contractual claims, including, but not limited to, breach of the implied covenant of
6 good faith and fair dealing, statutory claims handling violations, stacking of UM/UIM policies, or
7 liability for punitive or other extra-contractual damages, as such extra-contractual claims and damages,
8 have been and are expressly waived by Plaintiff through this Agreement and through the dismissal of the
9 lawsuit with prejudice.

10 7. The Parties agree to use Joseph Bongiovi, Esq. as the arbitrator.

11 8. The Parties shall advise the arbitrator of an agreement for binding arbitration and
12 proceed in a manner that is agreeable to the Parties and to the arbitrator. The Parties shall be allowed to
13 conduct any reasonable discovery permitted by the arbitrator under the Nevada Rules of Civil Procedure.
14 The arbitrator shall resolve any and all discovery disputes, including the scope of permitted discovery.
15 Subpoenas can be issued and enforced pursuant to NRS 38.233. Arbitration briefs and exhibits are to be
16 submitted in accordance with the instructions and desires of the arbitrator.

17 9. The arbitration hearing will be held at a mutually agreed upon date and time.

18 10. The arbitrator shall be given discretion to conduct the arbitration hearing in an informal
19 and expeditious manner allowing for such testimony or evidence as is needed to reach a decision. The
20 parties may submit and the arbitrator may consider written expert reports consistent with the format
21 requirements of Nev. R. Civ. P. 26 in lieu of live expert testimony.

22 11. Regarding Plaintiff's remaining UIM value dispute claims against State Farm, the "range
23 of award" herein shall be set at a \$0.00 "low" and capped at a \$50,000 "high" for each separate
24 accident. In other words, if Plaintiff is able to prove legal entitlement to UIM proceeds for each
25 separate accident, then Plaintiff could potentially recover up to \$50,000 in UIM benefits for the
26 September 17, 2016, accident, and up to another \$50,000 for the October 27, 2016, accident. Through
27 this agreement and arbitration, then, Plaintiff may ultimately be able to recover up to a total of \$100,000
28 from State Farm. The \$50,000 "high" for each separate accident derives from the amount of UIM

1 benefits potentially available under the “each person” policy limit under each separate UIM policy, and
2 constitutes the maximum amount that State Farm would potentially have to pay under this Agreement.

3 12. With respect to the September 17, 2016, accident, State Farm will be entitled to \$16,000
4 in offsets, which derive from the \$15,000 in BI and \$1,000 in MPC benefits already paid from other
5 sources. With respect to the October 27, 2016, accident, State Farm will be entitled to \$66,000 in
6 offsets, which derive form the \$50,000 in BI, \$1,000 in MPC, \$15,000 in UIM benefits already paid
7 from other sources.

8 13. The only manner in which State Farm would be obligated to pay any UIM proceeds for
9 the September 17, 2016, accident is if the arbitrator concluded that the total value of Plaintiff’s claim for
10 the that accident exceeded \$16,000. The only manner in which State Farm would be obligated to pay
11 any UIM proceeds for the October 27, 2016, accident is if the arbitrator concluded that the total value of
12 Plaintiff’s claim for that accident exceeded \$66,000. By way of example, if the arbitrator were to
13 conclude that the total value of Plaintiff’s claim for the September 17, 2016, accident was \$10,000, and
14 was \$55,000 for the October 27, 2016, accident, then State Farm would be obligated to pay \$0.00 in
15 UIM benefits under the first policy for the September 17, 2016, accident, and \$0.00 in UIM benefits
16 under the second policy for the October 27, 2017, accident. By way of a second example, if the
17 arbitrator were to conclude that the total value of Plaintiff’s claim for the September 17, 2016, accident
18 were \$50,000, and the total value of Plaintiff’s claim for the October 27, 2016, accident were \$80,000,
19 then State Farm would be obligated to pay \$34,000 in UIM benefits under the first policy for the
20 September 17, 2016, accident, and another \$14,000 in UIM benefits under the second policy for the
21 October 27, 2016, accident.

22 14. **The maximum amount that State Farm would ever be required to pay Plaintiff in**
23 **UIM money under this Agreement is \$50,000 for each accident under each UIM policy, for a total**
24 **of \$100,000 combined.** By way of a third example, if the arbitrator were to conclude that the total value
25 of Plaintiff’s claim for the September 17, 2016, accident was 80,000, and was \$200,000 for the October
26 27, 2016, accident, then State Farm would only be obligated to the maximum amount allowable under
27 this Agreement, i.e., \$50,000 in UIM benefits under the first policy for the September 17, 2016, accident,
28 and another \$50,000 in UIM benefits under the second policy for the October 27, 2016, accident, for a

combined total of \$100,000. In other words, any awarded amount over the \$50,000 policy limit for each accident shall be capped at \$50,000 for each accident, and any awarded amount over the cap is otherwise discharged/eliminated by operation of law through this Agreement.

4 15. The arbitrator shall not be permitted to make an award of attorney fees, legal costs, or
5 interest to any party. An Offer of Judgment by either party will have no effect.

6 16. Payments of the sum awarded, as limited and capped by the parameters set forth herein,
7 shall be made no later than 20 days after service of the arbitrator's written decision.

8 17. The Parties agree to equally share and pay for the arbitrator's fees and costs.

9 18. This Agreement is binding on the Parties, their heirs, executors, administrators, personal
10 representatives, legal representatives, and other such persons or entities.

11 19. The terms and conditions of this agreement may be modified upon the written and
12 mutual agreement of the Parties.

13 || Dated this February 13, 2018.

Dated this February 13, 2018.

14 || HALL JAFFE & CLAYTON, LLP

STUCKI INJURY LAW

15 || /s/ Riley A. Clayton

/s/ *Kyle A. Stucki*

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ORDER

IT IS SO ORDERED

Dated this 16 day of February, 2018.

Gloria M. Navarro, Chief Judge
UNITED STATES DISTRICT COURT